

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,)	
)	Case no. 4:10-cv-13768
Plaintiff,)	Honorable Mark A. Goldsmith
)	Referral Judge: Honorable Mona K.
v.)	Majzoub
)	
FREDERICK L. MCDONALD,)	
FREDERICK L. MCDONALD J.D., P.C.,)	
)	
Defendants.)	

UNITED STATES' RESPONSE TO ORDER TO SHOW CAUSE

The plaintiff United States of America hereby responds to the Court's Order to Show Cause why the above-captioned proceeding should not be dismissed pursuant to E.D. Mich. L.R. 41.2, for failure to prosecute, entered on February 2, 2011 (Dock. # 6). E.D. Mich. L.R. 41.2 provides in part that when it appears that the parties have taken no action in a case for a reasonable time, the Court may dismiss the case unless good cause is shown.

On September 21, 2010, the United States filed its complaint, to obtain judgments for unpaid internal revenue taxes, and an order enjoining the defendants from continuing to violate their payroll tax obligations. On December 5, 2010, both defendants were served with a summons and complaint, and proofs of service were filed on December 16, 2010. Dock. #s 4, 5. Responses were due by December 27, 2010, and none has been received by counsel for the United States, or filed with the Court. The United States did not promptly request Clerk's entries of default against the defendants, however, and on February 2, 2011, the Court issued its Order to Show Cause.

Counsel for the United States did not immediately request Clerk's entries of default due to deadlines and proceedings in other cases, and due to an intention to prepare both the

applications for default and applications for default judgments at the same time. Because this case demands in part an injunction against the defendants and not merely judgment for a sum certain, preparing a motion for default judgment and supporting declarations is somewhat complicated. Counsel for the United States apologizes for the delay in requesting entries of default and default judgment.

The United States is filing requests for entries of default contemporaneously herewith, and counsel has begun preparing motions for default judgment, which he intends to file within 14 days, or by Friday, February 25, 2011 (assuming that the defaults are entered).

As a additional cause for not dismissing this case, the United States notes that the applicable period of limitations on suing to collect many of the tax liabilities at issue (26 U.S.C. § 6502) would bar re-filing, even if the case were dismissed without prejudice. Any dismissal would permanently prevent the United States from collecting the unpaid taxes at issue, which would impose an additional cost upon taxpayers at large, without the United States having missed any specific litigation deadline.

For the foregoing reasons, the plaintiff United States prays that the Court lift its Order to Show Cause.

Respectfully Submitted,

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/s/ James E. Brown
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CERTIFICATE OF SERVICE

I certify that service of the foregoing document has been made on this 11th day of February, 2011, by depositing a copy in the United States' mail, first class postage prepaid, addressed to the following:

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